

The basic purpose of this bill is to modernize and make more efficient the statutory provisions governing judicial review of the Commission's orders.

Before describing the specific provisions of S. 2687, and the changes it would make in existing law, it may be useful to first generally describe the present procedures for judicial review of our orders to place the provisions of this bill in perspective.

Because of the technical nature of both existing law and the changes made in it by S. 2687, we have provided the committee with a chart, labeled as appendix B (p. 25), which shows the existing law and the provisions of S. 2687 on a comparative basis by major subject matter categories.

Judicial review of the Commission's orders is now governed by various sections of title 28 of the United States Code which are summarized in appendix A (p. 24).

Such review is in a U.S. district court of three judges, at least one of whom must be a circuit judge. The decisions of such courts are reviewable by the Supreme Court by appeal, rather than by the discretionary writ of certiorari.

These provisions were initially enacted as part of the Urgent Deficiencies Act of 1913, and with minor changes have remained unchanged since that time.

The following year, in the Federal Trade Commission Act, the Congress designated the then circuit courts of appeals to review orders of that agency.

As new regulatory agencies were created, Congress usually provided for judicial review of their orders in the courts of appeals.

While certain orders of the Federal Communications Commission, the Federal Maritime Commission, and the Department of Agriculture were originally made reviewable under the Urgent Deficiencies Act procedure, the so-called Hobbs Act or Judicial Review Act of 1950 (28 U.S.C. § 2341-52 (Supp. II, 1967)) transferred review of the orders of these agencies to the courts of appeals, thus leaving only orders of the Interstate Commerce Commission reviewable in the three-judge district courts.

In recent years, this procedure has been criticized by members of the Federal judiciary in the course of reviewing orders of the Commission as being "cumbersome" and "inefficient." (*Freight-Forwarders Institute v. United States* 236 F. Supp. 460, 462 (S.D. N.Y. 1967) (Feinberg J.).)

In an opinion dealing with a phase of the complex litigation arising out of the Commission's order approving the Penn-Central merger, the Court observed that counsel for all the parties participating in that litigation:

* * * have demonstrated that the long outmoded machinery for review of orders of the Interstate Commerce Commission by a suit before a three-judge court can be made to work although with creaks and strains that ought to be eliminated. (*Erie-Lackawanna R. Co. v. United States*, 279 F. Supp. 316, 324 (S.D. N.Y. 1967 (Friendly J.).)

In commenting on a provision requiring review by a three-judge court, the Supreme Court has stated that this mode of review:

* * * particularly in regions where, despite modern facilities, distance still plays an important part in the effective administration of justice * * * [d]islocates the normal operations of the system of lower Federal courts. (*Phillips v. United States*, 312 U.S. 246, 250-251 (1941).)